



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 19-29, FD1

Proposed

RESOLUTION

SUPPORTING THE INITIATION BY THE OFFICE OF THE CITY AUDITOR OF AN INDEPENDENT FORENSIC AUDIT OF THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION AND THE CITY AND COUNTY OF HONOLULU CONCERNING THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT.

WHEREAS, pursuant to Section 17-103 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition), the Honolulu Authority for Rapid Transportation ("HART") is responsible for the development of the City's planned fixed-guideway transit system, known as the "Honolulu High-Capacity Transit Corridor Project" ("Rail Project" or "Project"); and

WHEREAS, the Rail Project is a planned 20.1-mile fixed-guideway rail transit system extending from East Kapolei to the Ala Moana Shopping Center; and

WHEREAS, pursuant to Act 247, Session Laws of Hawaii 2005, on August 10, 2005, the City Council ("Council") passed Bill 40, FD1, CD2, which established a one-half percent general excise and use tax surcharge to be levied beginning January 1, 2007, to be used for the purposes of funding the operating and capital costs of a locally preferred alternative for a mass transit project within the City and County of Honolulu ("City"); and

WHEREAS, on August 23, 2005, Bill 40, FD1, CD2, was approved by the Mayor and became law as Ordinance 05-207; and

WHEREAS, prior to the establishment of HART, the City's Department of Transportation Services ("DTS") was responsible for the Rail Project, and the DTS and other City departments were involved in awarding the following contracts for the Rail Project totaling \$2.9 billion:

1. InfraConsult LLC, program management support, \$11.9 million, awarded on April 20, 2007;
2. PB Americas, Inc., engineering consultant-PE/EIS phase, \$168 million, awarded on August 24, 2007;
3. GEOLABS Inc., drill shaft load test, \$1.2 million, awarded on June 30, 2009;
4. Kiewit Infrastructure West Co., West Oahu/Farrington Hwy guideway, \$486 million, awarded on October 21, 2009;



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5. InfraConsult LLC, program management support, \$36.7 million, awarded November 2009;
6. Kiewit/Kobayashi JV, maintenance and storage facility, \$195.2 million, awarded on June 24, 2010;
7. Enovity, Inc., LEED certification services, \$278,630, awarded on October 6, 2010;
8. HDR Engineering, Inc., architectural/engineering services for Farrington Highway stations, \$5.5 million, awarded on January 12, 2011;
9. Kiewit Infrastructure West Co., Kamehameha Highway guideway, \$372 million, awarded on March 21, 2011;
10. Ansaldo Honolulu JV, core systems, \$1.4 billion, awarded on March 21, 2011;
11. AECOM Technical Services Inc., HDOT design review, \$3 million, awarded on June 7, 2011;
12. PB Americas, Inc., general engineering consultant, \$300 million, awarded on June 30, 2011; and

WHEREAS, on October 27, 2009, the Council received the City Auditor's Audit of the Department of Transportation Services' Honolulu High-Capacity Transit Corridor Project Contracts ("DTS Audit") in which the City Auditor reviewed three contracts, totaling \$107 million, for the Rail Project and found that:

1. All three rail contracts complied with procurement requirements. However the Department of Transportation Services-Rail Transit Division ("DTS-RTD") needed to improve its documentation of the basis for its procurement decisions to improve transparency; and
2. DTS-RTD complied with contract requirements, but needed to improve monitoring and needed to develop detailed guidelines to increase accountability; and



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WHEREAS, in the DTS Audit, the City Auditor recommended that DTS-RTD should:

1. Continue to encourage fair and open procurement by remaining vigilant in following existing procurement policies and regulations;
2. Within the official Record of Procurement, sufficiently document the sources of information for contract cost estimates prior to procurement and provide a memorandum or summary of contract negotiations and final contract cost;
3. Convey support for proper oversight by all agencies involved by providing outside agencies with timely and complete submissions for review;
4. For future large or complex procurements, consider outreach through diverse media through market communication networks such as trade associations, to increase competition and encourage additional qualified firms to submit bids;
5. Improve documentation of reasons for contract negotiations and awards to increase transparency and accountability;
6. Direct contractors to submit any remaining deliverables and close the Alternatives Analysis contract to ensure that maximum costs are not exceeded;
7. Develop guidelines for providing supporting documentation of the work performed to verify the contract-related tasks to invoices submitted by subcontractors who are paid in lump sum amounts;
8. Specify the terms under which a future allowance for extra work would be established, the basis for the allowance amount, and the approval process to be used; and
9. Withhold approval of invoices for payment until the contractor has met applicable contract requirements, including the development of pertinent policies and procedures, to ensure the proper expenditure of funds; and



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WHEREAS, although \$2.8 billion of contracts were awarded by the City after the completion of the DTS Audit, no subsequent audits were completed concerning whether there was proper oversight of the City's procurement, award, and administration of the \$2.8 billion in Rail Project contracts; and

WHEREAS, a forensic audit examines an entity's system of internal controls to identify any weaknesses in the controls designed to safeguard assets and to determine whether an employee or other person has exploited internal control weaknesses to misappropriate assets or commit other illegal actions; and

WHEREAS, it is the Council's belief that there may have been weaknesses in the City's oversight concerning the Rail Project's contracts, so it would be prudent for the Office of the City Auditor to initiate an independent forensic audit concerning the City's procurement, award, and administration of the Rail Project contracts; and

WHEREAS, HART began operations on July 1, 2011, and the Rail Project began construction on April 20, 2012, but during the subsequent seven years, the Rail Project has suffered from significant delays, numerous change orders, legal actions, leadership changes, and, most significantly, an increase in the estimated costs of the Rail Project from \$5.163 billion in 2012 to \$9.181 billion in 2018 and a delay in the anticipated date of completion to full service operation from 2020 to 2026; and

WHEREAS, on April 15, 2016, the City Auditor issued an audit of the Honolulu Authority for Rapid Transportation ("HART Audit") in which the City Auditor made specific findings concerning HART's failure to construct the Rail Project economically, effectively, and efficiently, including the finding that HART has failed to exercise sufficient controls over its financial information to ensure that: (1) data are complete and readily available; (2) delay claims are adequately tracked, monitored, and reported; and (3) pending utility agreements, contingency allowance figures, and county general excise and use tax surcharge receipt figures are complete and accurate; and

WHEREAS, one key recommendation in the HART Audit was that stronger controls over contract administration practices and invoice payment practices are needed. Specifically, guidance for contract administration was unclear, procurement file documentation controls had weaknesses, and the invoice payment process was inadequate to prevent improper payments from being made; and

WHEREAS, on September 6, 2017, the City Council ("Council") approved Resolution 17-199, CD1, which requested that the City Auditor conduct a follow-up audit of HART, to include a review of the certain concerns including: (1) whether the expenditures charged to HART by Rail Project contractors were valid and accurate; and



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(2) whether HART has implemented the project management and contract administration controls over the contractors needed to prevent cost overruns for the Rail Project; and

WHEREAS, on January 17, 2019, the City Auditor issued the Follow-Up Audit of the Honolulu Authority for Rapid Transportation ("HART Follow-Up Audit"); and

WHEREAS, the HART Follow-Up Audit made specific findings concerning the inadequacy of HART's internal controls to prevent cost overruns on the Rail Project. Specifically:

1. HART lacks an internal audit function to properly monitor and control contract costs;
2. HART relies on an inefficient paper-based contract filing system to monitor Project and contract costs;
3. HART lacks expertise in modeling and quantifying the impact of contract changes and amendments on Project costs and Project schedules; and
4. Key personnel were not involved with reviewing change order and contract amendments. Most notably, HART's Chief Financial Officer was cut out of some financial review processes, including the review and approval of change orders; and

WHEREAS, one of the recommendations made in the HART Follow-Up Audit was for HART to establish an internal audit function, attached to the HART Board, to conduct independent oversight of Project expenditures and compliance with applicable policies, procedures, law, contract requirements, and best practices; and

WHEREAS, in HART's response to the HART Follow-Up Audit, HART stated that its staff would recommend to the HART Board that the Board consider approving the hiring of an internal auditor or the retention of an outside firm to conduct audits of HART's work as well as that of HART's consultants; and

WHEREAS, it is the Council's belief that because of the inadequacy of HART's internal controls to prevent cost overruns and scheduling, it may be possible that a HART employee, consultant, or contractor exploited internal control weaknesses to misappropriate public assets or commit other illegal actions and that these illegal actions may have contributed to the increase in the estimated costs of the Rail Project from \$5.163 billion in 2012 to \$9.181 billion in 2018; and



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WHEREAS, it is the Council's belief that the an independent forensic audit of HART and the City should be initiated by the Office of the City Auditor to address any misappropriation of public assets or other illegal actions; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council supports the initiation of an independent forensic audit of the Honolulu Authority for Rapid Transportation's operations, procurement, contract award, and administration; and the City and County of Honolulu's procurement, award, and administration of the Honolulu High-Capacity Transit Corridor Project's contracts; to be conducted by an independent auditor to be selected and paid for by the Office of the City Auditor, to ensure that no City or Honolulu Authority for Rapid Transportation employee, consultant, or contractor exploited the City's or Honolulu Authority for Rapid Transportation's internal control weaknesses to misappropriate public assets or commit other illegal actions; and



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BE IT FINALLY RESOLVED that copies of this resolution be sent to the Mayor, the Managing Director, Director of Budget and Fiscal Services, Director of Transportation Services, the Executive Director and Chair of the Board of the Honolulu Authority for Rapid Transportation, and the Acting City Auditor.

INTRODUCED BY:

Heidi Tsuneyoshi

DATE OF INTRODUCTION:

February 11, 2019
Honolulu, Hawaii

Councilmembers